

DECISION

Jannice 11/
10/31
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-209333**DATE: December 15, 1982****MATTER OF: John C. Grimberg Company, Inc.****DIGEST:**

Protest issue is before Federal courts. While jurisdiction of courts is disputed by the Department of Justice and it may ultimately be determined that matters raised in lawsuit are not for resolution by courts, the protester has not requested that courts involved seek GAO opinion on the matters before them. Therefore, protest is dismissed.

John C. Grimberg Company, Inc. (Grimberg), protests against the General Services Administration's (GSA) award of a contract for building repairs and improvements to P.W. Parker, Inc. (Parker), pursuant to invitation for bids No. GS-11B-18208. By letter of July 12, 1982, Grimberg protested to GSA that Parker's bid was nonresponsive for failure to comply with the invitation's subcontractor listing requirement. Grimberg protests to our Office on the sole basis that GSA improperly awarded the contract to Parker on September 29, without first resolving the protest Grimberg had filed with GSA. Grimberg further alleges that GSA did not advise Grimberg of the award to Parker until after the award was already made--thus, precluding any effective injunctive relief.

We will not consider the protest.

While Grimberg's protest was pending in our Office, Grimberg filed a complaint in the United States Claims Court (Civil Action No. 510-82C) seeking injunctive and declaratory relief. Grimberg's complaint did not request the United States Claims Court to seek our opinion on the issues raised before resolving the lawsuit. The United States Claims Court, on October 7, 1982, determined that it lacked subject matter jurisdiction and transferred the matter to the United States District Court for the District of Columbia. Both the United States Government and Grimberg appealed the United States Claims Court's order of October 7 to the United States Court of Appeals for the Federal Circuit contending that the transfer is inappropriate.

It is our policy not to decide protests where the material issues are before a court of competent jurisdiction unless the court requests, expects or otherwise expresses an interest in our views. 4 C.F.R. § 21.10 (1982). Since the Department of Justice is contesting jurisdiction of both the United States Claims Court and the United States District Court in the case, it may ultimately be determined that the matters are not for resolution by either court. However, since the protester has not requested that any of the courts involved seek our opinion on the matters before them and none of the above courts has otherwise indicated any interest in our views, we will dismiss the protest at this time. See Numax Electronics, Inc., B-204632.3, January 22, 1982, 82-1 CPD 49.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel